

PROVIDING FOR THE CONSIDERATION OF H.R. 1534, THE  
PRIVATE PROPERTY RIGHTS IMPLEMENTATION ACT OF  
1997

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OCTOBER 21, 1997.—Referred to the House Calendar and ordered to be printed

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Mr. MCINNIS, from the Committee on Rules,  
submitted the following

REPORT

[To accompany H. Res. 271]

The Committee on Rules, having had under consideration House Resolution 271, by a non-record vote, report the same to the House with the recommendation that the resolution be adopted.

BRIEF SUMMARY OF PROVISIONS OF RESOLUTION

The resolution provides for the consideration of H.R. 1534, the “Private Property Rights Implementation Act of 1997” under a modified closed rule. The rule provides one hour of general debate divided equally between the chairman and ranking minority member of the Committee on the Judiciary.

The rule waives clause 2(1)(6) of rule XI (3 day availability of committee reports) against consideration of the bill.

The rule makes in order the Judiciary Committee amendment in the nature of a substitute now printed in the bill as an original bill for the purpose of amendment, modified by the amendments printed in part 1 of this report. The rule provides that the committee amendment in the nature of a substitute be considered as read.

The rule makes in order a further amendment in the nature of a substitute if offered by Representative Conyers of Michigan or his designee.

The rule provides that the further amendment shall be considered as read, shall be debatable for thirty minutes equally divided and controlled by the proponent and an opponent, and shall not be subject to amendment.

The rule provides that if the further amendment is rejected or not offered, then no other amendment shall be in order except the amendment printed in part 2 of this report.

The rule provides that the amendment printed in part 2 of this report may only be offered by the Member designated in the report, shall be considered as read, shall be debatable for thirty minutes equally divided and controlled by the proponent and an opponent, and shall not be subject to amendment.

Finally, the rule provides one motion to recommit with or without instructions.

SUMMARY OF AMENDMENTS MADE IN ORDER BY THE RULE FOR H.R.  
1534, PRIVATE PROPERTY RIGHTS IMPLEMENTATION ACT OF 1997

(Listed in the order they will appear in this report)

*Part I (amendment considered as adopted)*

1. Coble: Limits overbroad terms and phrases and gives the local land use entities further involvement in the process before a takings claimant could pursue an administrative or state judicial appeal and subsequent federal litigation.

*Part II*

1. Boehlert—30 mins: Substitute. Allows property owners to expedite their claims against federal agencies.

PART I

Amendment considered as adopted by the rule:

Page 3, line 2, strike “a significant but” and insert “an”.

Page 3, strike lines 11 through 14 and insert the following:

“(2) is patently unclear.

Page 3, line 24, insert “(A)” after “(2)”.

Page 4, line 1, strike “(A)” and insert “(i)”.

Page 4, lines 6 and 7, strike “, without regard to any uses that may be permitted elsewhere”.

Page 4, strike lines 8 through 13 and insert the following:

“(ii)(I) one meaningful application, as defined by the locality concerned within that State or territory, to use the property has been submitted but has not been approved, and the party seeking redress has applied for one appeal or waiver which has not been approved, where the applicable statute, ordinance, custom, or usage provides a mechanism for appeal to or waiver by an administrative agency; or

“(II) one meaningful application, as defined by the locality concerned within that State or territory, to use the property has been submitted but has not been approved, and the disapproval explains in writing the use, density, or intensity or development of the property that would be approved, with any conditions therefor, and the party seeking redress has resubmitted another meaningful application taking into account the terms of the disapproval, except that—

“(aa) if no such reapplication is submitted, then a final decision shall not have been reached for purposes of this subsection, except as provided in subparagraph (B); and

“(bb) if the reapplication is not approved, or if the reapplication is not required under subparagraph (B), then a final decision exists for purposes of this subsection if the

party seeking redress has applied for one appeal or waiver with respect to the disapproval, which has not been approved, where the applicable statute, ordinance, custom, or usage provides a mechanism of appeal or waiver by an administrative agency; and

Page 4, line 14, strike “(C)” and insert “(iii)”.

Page 4, strike lines 19 through 24 and insert the following:

“(B) The party seeking redress shall not be required to apply for an appeal or waiver described in paragraph (1)(B) if no such appeal or waiver is available, if it cannot provide the relief requested, or if the application or reapplication would be futile.

Page 5, line 4, strike the quotation marks and second period.

Page 5, insert the following after line 4:

“(f) Nothing in subsections (c), (d), or (e) alters the substantive law of takings of property, including the burden of proof borne by the plaintiff.”.

Page 5, lines 18 thru 20, strike “, without regard to any uses that may be permitted elsewhere”.

Page 5, line 22, strike “denied” and insert “has not been approved”.

Page 5, lines 23 and 24, strike “but is denied one appeal or waiver” and insert “one appeal or waiver which has not been approved”.

Page 6, line 6, strike “the prospects” and all that follows through “merits” on line 9 and insert “application or reapplication to use the property would be futile”.

Page 6, line 9, strike the quotation marks and second period.

Page 6, insert the following after line 9:

“(3) Nothing in this subsection alters the substantive law of takings of property, including the burden of proof borne by the plaintiff.”.

Page 6, lines 22 through 24, strike “, without regard to any uses that may be permitted elsewhere”.

Page 7, line 2, strike “denied” and insert “has not been approved”.

Page 7, lines 3 and 4, strike “but is denied one appeal or waiver” and insert “one appeal or waiver which has not been approved”.

Page 7, line 9, strike “the prospects” and all that follows through “merits” on line 11 and insert “application or reapplication to use the property would be futile”.

Page 7, line 11, insert the following after the first period: “Nothing in this paragraph alters the substantive law of takings of property, including the burden of proof borne by the plaintiff.”.

## PART II

The amendment made in order by the rule is as follows:

### 2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BOEHLERT OF NEW YORK, OR A DESIGNEE, DEBATABLE FOR 30 MINUTES

Strike all after the enacting clause and insert the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Private Property Rights Implementation Act of 1997”.

**SEC. 2. UNITED STATES AS DEFENDANT.**

Section 1346 of title 28, United States Code, is amended by adding at the end the following:

“(h)(1) Any claim brought under subsection (a) that is founded upon a property right or privilege secured by the Constitution, but was allegedly infringed or taken by the United States, shall be ripe for adjudication upon a final decision rendered by the United States, that causes actual and concrete injury to the party seeking redress.

“(2) For purposes of this subsection, a final decision exists if—

“(A) the United States makes a definitive decision regarding the extent of permissible uses on the property that has been allegedly infringed or taken; and

“(B) one meaningful application, as defined by the relevant department or agency, to use the property has been submitted but denied, and the party seeking redress has applied for but is denied one appeal or waiver, where the applicable law of the United States provides a mechanism for appeal to or waiver by an administrative agency.

The party seeking redress shall not be required to apply for an appeal or waiver described in subparagraph (B) if no such appeal or waiver is available or if such an appeal or waiver would be futile.”.

**SEC. 3. JURISDICTION OF COURT OF FEDERAL CLAIMS.**

Section 1491(a) of title 28, United States Code, is amended by adding at the end the following:

“(3) Any claim brought under this subsection founded upon a property right or privilege secured by the Constitution, but allegedly infringed or taken by the United States, shall be ripe for adjudication upon a final decision rendered by the United States, that causes actual and concrete injury to the party seeking redress. For purposes of this paragraph, a final decision exists if—

“(A) the United States makes a definitive decision regarding the extent of permissible uses on the property that has been allegedly infringed or taken; and

“(B) one meaningful application, as defined by the relevant department or agency, to use the property has been submitted but denied, and the party seeking redress has applied for but is denied one appeal or waiver, where the applicable law of the United States provides a mechanism for appeal or waiver.

The party seeking redress shall not be required to apply for an appeal or waiver described in subparagraph (B) if no such appeal or waiver is available or if such an appeal or waiver would be futile.”.

**SEC. 4. EFFECTIVE DATE.**

The amendments made by this Act shall apply to actions commenced on or after the 120th day after the date of the enactment of this Act.